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As of: October 26, 2012 (8:45AM)

LCsa07-PERS

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising the funding of the public employees' retirement system; providing that the unallocated portion of coal severance tax collections be statutorily appropriated to the public employees' defined benefit retirement plan; revising employee and employer contributions to the system's defined benefit and defined contribution plans; providing for an additional actuarially determined contribution from local government and school district employers with employees covered under the system's defined benefit plan; amending sections 15-35-108, 19-3-315, and 19-3-316, MCA; and providing an effective date."

WHEREAS, Article VIII, Section 15 of the Montana Constitution requires that "Public retirement systems shall be funded on an actuarially sound basis" and that "Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses"; and

WHEREAS, the unprecedented collapse of the financial markets in 2008 through 2009 and the subsequent slow rate of economic recovery has resulted in little or no prospect that current statutory contribution rates together with future market returns will be

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1 sufficient to fund the Public Employees' Retirement System on an
2 actuarially sound basis, and current contributions remain
3 insufficient to pay the past and future accruals of retirement
4 benefits for members currently in the system; and

5 WHEREAS, failure to return the system to a position of
6 actuarially sound funding places the benefits to be paid to current
7 system participants in jeopardy and results in collection of employee
8 contributions for which future benefits may not be guaranteed; and

9 WHEREAS, the current and increasing level of unfunded
10 liabilities has the potential to compromise the credit ratings of the
11 state of Montana and of local government entities, including public
12 school districts; and

13 WHEREAS, because reasonable increases in employer contributions
14 and reasonable reductions in benefits for future participants alone
15 will not be sufficient to return the system to a position of
16 actuarially sound funding, a reasonable increase in contributions for
17 current participants is necessary to help return the system to a
18 position of actuarially sound funding; and

19 WHEREAS, during the past two legislative sessions and interims,
20 the legislature, interim committees, the retirement system board and
21 staff, and the governor's office have analyzed and enacted
22 alternatives for returning the system to a position of actuarially
23 sound funding without raising contract impairment issues for current
24 members which have failed to reduced system costs enough to restore
25 the system to actuarial soundness; and WHEREAS, in light of
26 significant strains on the Montana economy, on state and local

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government budgets, and on taxpayers, a modest supplemental contribution rate increase of 1 percent imposed on current members, with an appropriate mechanism to terminate the supplemental contribution rate as system funding improves and in conjunction with additional employer and state contributions, is, pursuant to the language of *U.S. Trust Company of New York v. New Jersey*, 431 U.S. 1 (1977) concerning contract impairment, reasonable and necessary, is for a valid public purpose, and is the least impairing alternative available to the legislature as it seeks to fulfill its constitutional obligation to ensure the retirement system is funded in an actuarially sound manner.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108 , MCA, is amended to read:

~~"15-35-108. (Temporary) Disposal of severance taxes.~~

~~Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:~~

~~—— (1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.~~

~~—— (2) The amount of 12% of coal severance tax collections is allocated to the long range building program account established in 17-7-205.~~

Comment [1]: <eff>

Comment [2]: </eff>

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1 ~~—— (3) The amount of 5.46% must be credited to an account in the~~
2 ~~state special revenue fund to be allocated by the legislature for~~
3 ~~provision of basic library services for the residents of all counties~~
4 ~~through library federations and for payment of the costs of~~
5 ~~participating in regional and national networking, conservation~~
6 ~~districts, and the Montana Growth Through Agriculture Act.~~
7 ~~Expenditures of the allocation may be made only from this account.~~
8 ~~Money may not be transferred from this account to another account~~
9 ~~other than the general fund. Beginning July 1, 2012, any unreserved~~
10 ~~fund balance at the end of each fiscal year must be deposited in the~~
11 ~~general fund.~~

12 ~~—— (4) The amount of 1.27% must be allocated to a permanent fund~~
13 ~~account for the purpose of parks acquisition or management. Income~~
14 ~~from this permanent fund account, excluding unrealized gains and~~
15 ~~losses, must be appropriated for the acquisition, development,~~
16 ~~operation, and maintenance of any sites and areas described in~~
17 ~~23-1-102.~~

18 ~~—— (5) The amount of 0.95% must be allocated to the debt service~~
19 ~~fund type to the credit of the renewable resource loan debt service~~
20 ~~fund.~~

21 ~~—— (6) The amount of 0.63% must be allocated to a trust fund for~~
22 ~~the purpose of protection of works of art in the capitol and for other~~
23 ~~cultural and aesthetic projects. Income from this trust fund account,~~
24 ~~excluding unrealized gains and losses, must be appropriated for~~
25 ~~protection of works of art in the state capitol and for other cultural~~
26 ~~and aesthetic projects.~~

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1 ~~—— (7) The amount of 5.8% through September 30, 2013, and~~
2 ~~beginning October 1, 2013, the amount of 2.9% must be credited to the~~
3 ~~coal natural resource account established in 90-6-1001(2).~~

4 ~~—— (8) After the allocations are made under subsections (2)~~
5 ~~through (7), \$250,000 for the fiscal year must be credited to the coal~~
6 ~~and uranium mine permitting and reclamation program account~~
7 ~~established in 82-4-244.~~

8 ~~—— (9) (a) Subject to subsection (9) (b), all other revenue from~~
9 ~~severance taxes collected under the provisions of this chapter must~~
10 ~~be credited to the general fund of the state.~~

11 ~~—— (b) The interest income from \$140 million of the coal severance~~
12 ~~tax permanent fund that is deposited in the general fund is~~
13 ~~statutorily appropriated, as provided in 17-7-502, on an annual basis~~
14 ~~as follows:~~

15 ~~—— (i) \$65,000 to the cooperative development center;~~

16 ~~—— (ii) \$625,000 for the growth through agriculture program~~
17 ~~provided for in Title 90, chapter 9;~~

18 ~~—— (iii) \$1.275 million to the research and commercialization~~
19 ~~state special revenue account created in 90-3-1002, of which \$375,000~~
20 ~~per year is appropriated for fiscal years 2012 and 2013 to the~~
21 ~~department of commerce for the small business state matching grant~~
22 ~~program authorized in 90-1-117 to provide matching grants for small~~
23 ~~business innovation research and small business technology transfer,~~
24 ~~\$125,000 per year is appropriated for fiscal years 2012 and 2013 to~~
25 ~~the high performance supercomputing program in the department of~~
26 ~~commerce, and \$300,000 per year is appropriated for fiscal years 2012~~

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~~and 2013 to the board of regents for the development of energy and natural resources doctoral programs at Montana tech of the university of Montana;~~

~~— (iv) to the department of commerce;~~

~~— (A) \$125,000 for a small business development center;~~

~~— (B) \$50,000 for a small business innovative research program;~~

~~— (C) \$425,000 for certified regional development corporations;~~

~~— (D) \$200,000 for the Montana manufacturing extension center at Montana state university Bozeman; and~~

~~— (E) \$300,000 for export trade enhancement. (Terminates June 30, 2013 sec. 5, Ch. 459, L. 2009.)~~

Comment [3]: <eff>

Comment [4]: </eff>

Comment [5]: <eff>

Comment [6]: </eff>

15-35-108. ~~(Effective July 1, 2013 Temporary)~~ Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties

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1 through library federations and for payment of the costs of
2 participating in regional and national networking, conservation
3 districts, and the Montana Growth Through Agriculture Act.
4 Expenditures of the allocation may be made only from this account.
5 Money may not be transferred from this account to another account
6 other than the general fund. ~~Beginning July 1, 2012, any~~ Any
7 unreserved fund balance at the end of each fiscal year must be
8 deposited in the general fund.

9 (4) The amount of 1.27% must be allocated to a permanent fund
10 account for the purpose of parks acquisition or management. Income
11 from this permanent fund account, excluding unrealized gains and
12 losses, must be appropriated for the acquisition, development,
13 operation, and maintenance of any sites and areas described in
14 23-1-102.

15 (5) The amount of 0.95% must be allocated to the debt service
16 fund type to the credit of the renewable resource loan debt service
17 fund.

18 (6) The amount of 0.63% must be allocated to a trust fund for
19 the purpose of protection of works of art in the capitol and for other
20 cultural and aesthetic projects. Income from this trust fund account,
21 excluding unrealized gains and losses, must be appropriated for
22 protection of works of art in the state capitol and for other cultural
23 and aesthetic projects.

24 (7) The amount of 5.8% through September 30, 2013, and
25 beginning October 1, 2013, the amount of 2.9% must be credited to the
26 coal natural resource account established in 90-6-1001(2).

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(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter ~~must be credited to the general fund of the state~~ is statutorily appropriated to the trust fund for the public employees' retirement system defined benefit plan established pursuant to 19-3-103.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) ~~\$1.25 million~~ \$625,000 for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) ~~\$3.65~~ \$1.275 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement. (Terminates June

Comment [7]: <eff>

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30, 2019--secs. 2, 3, Ch. 459, L. 2009.)

Comment [8]: </eff>

(v) \$3,000,000 to the trust fund for the public employees'
retirement system defined benefit plan established pursuant to
19-3-103.

15-35-108. (Effective July 1, 2019) Disposal of severance

Comment [9]: <eff>

Comment [10]: </eff>

taxes. Severance taxes collected under this chapter must, in
accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is
allocated to the trust fund created by Article IX, section 5, of the
Montana constitution. The trust fund money must be deposited in the
fund established under 17-6-203(6) and invested by the board of
investments as provided by law.

(2) The amount of 12% of coal severance tax collections is
allocated to the long-range building program account established in
17-7-205.

(3) The amount of 5.46% must be credited to an account in the
state special revenue fund to be allocated by the legislature for
provision of basic library services for the residents of all counties
through library federations and for payment of the costs of
participating in regional and national networking, conservation
districts, and the Montana Growth Through Agriculture Act.
Expenditures of the allocation may be made only from this account.
Money may not be transferred from this account to another account
other than the general fund. ~~Beginning July 1, 2012, any~~ Any
unreserved fund balance at the end of each fiscal year must be
deposited in the general fund.

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(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9) (b), All other revenue from severance taxes collected under the provisions of this chapter ~~must~~ be credited to the general fund of the state is statutorily appropriated to the trust fund for the public employees' retirement system defined benefit plan established pursuant to 19-3-103."

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(b) \$6,065,000 of the interest income from the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis to the trust fund for the public employees' retirement system defined benefit plan established pursuant to 19-3-103.

{ Internal References to 15-35-108:

x2-17-805	x17-7-205	x17-7-502	x17-7-502
x22-2-301	x22-2-304	x22-2-321	x23-1-108
x76-15-530	x82-4-244	x90-6-1001	}

Section 2. Section 19-3-315 , MCA, is amended to read:

"19-3-315. Member's contribution to be deducted. (1) (a) ~~Each~~
Except as provided in subsection (2), each member's contribution is:

~~(i) for a member hired prior to July 1, 2011, 6.9% of the member's compensation; and~~

~~(ii) for a member hired on or after July 1, 2011, 7.9% of the member's compensation.~~

(b) ~~For members hired on or after July 1, 2011, the~~ The board shall periodically annually review the required contributions and recommend future adjustments to the legislature as needed to maintain the amortization schedule set by the board for the payment of the system's unfunded liability.

(2) Each member's contribution is 6.9% on July 1 following the system's annual actuarial valuation if:

(i) the valuation determines that the period required to amortize the system's liabilities is less than 25 years; and

(ii) reducing the employee contribution would not cause the

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1 amortization period to exceed 25 years.

2 (3) Payment of salaries or wages less the contribution is full
3 and complete discharge and acquittance of all claims and demands for
4 the service rendered by members during the period covered by the
5 payment, except their claims to the benefits to which they may be
6 entitled under the provisions of this chapter.

7 ~~(3)~~ (4) Each employer, pursuant to section 414(h)(2) of the
8 federal Internal Revenue Code, 26 U.S.C. 414(h)(2), shall pick up and
9 pay the contributions that would be payable by the member under
10 ~~subsection (1)~~ subsections (1) and (2) for service rendered after June
11 30, 1985.

12 ~~(4)~~ (5) (a) The member's contributions picked up by the
13 employer must be designated for all purposes of the retirement system
14 as the member's contributions, except for the determination of a tax
15 upon a distribution from the retirement system.

16 (b) In the case of a member of the defined benefit plan, these
17 contributions must become part of the member's accumulated
18 contributions but must be accounted for separately from those
19 previously accumulated.

20 (c) In the case of a member of the defined contribution plan,
21 these contributions must be allocated as provided in 19-3-2117.

22 ~~(5)~~ (6) The member's contributions picked up by the employer
23 must be payable from the same source as is used to pay compensation
24 to the member and must be included in the member's wages, as defined
25 in 19-1-102, and compensation. The employer shall deduct from the
26 member's compensation an amount equal to the amount of the member's

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contributions picked up by the employer and remit the total of the
contributions to the board."

{ *Internal References to 19-3-315:*

x19-2-1004 x19-3-511 x19-3-2117 x19-21-214 }

Section 3. Section 19-3-316 , MCA, is amended to read:

"19-3-316. Employer contribution rates. (1) Each employer
shall contribute to the system. Except as provided in subsection (2),
the employer shall pay as employer contributions ~~6.9%~~ 7.9% of the
compensation paid to all of the employer's employees plus any
additional contribution under subsection (3), except for those
employees properly excluded from membership. Of employer
contributions made under this subsection for both defined benefit
plan and defined contribution plan members, a portion must be
allocated for educational programs as provided in 19-3-112. Employer
contributions for members under the defined contribution plan must
be allocated as provided in 19-3-2117.

(2) Local government and school district employer
contributions must be the total employer contribution rate provided
in subsection (1) minus the state contribution rates under 19-3-319.

(3) Subject to subsection (4), each employer shall contribute
to the system an additional employer contribution equal to 0.27% of
the compensation paid to all of the employer's employees, except for
those employees properly excluded from membership.

(4) (a) The board shall ~~periodically~~ annually review the
additional employer contribution provided for under subsection (3)

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and [section 4] and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on July 1 following the board's receipt of the system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and

(ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years."

{ Internal References to 19-3-316:

x19-3-108	x19-3-112	x19-3-319	x19-3-511
x19-3-2117	x19-3-2117	x19-21-214	x19-21-214

x20-9-501 }

NEW SECTION. **Section 4. Local employer actuarial contributions.** (1) On September 1 of each year, in addition to the employer contribution required under 19-3-316, each local governmental entity and school district employer shall contribute to the defined benefit plan an amount certified by the board to be that employer's share of the actuarially determined contribution as of the system's actuarial valuation for the previous fiscal year.

(2) For purposes of subsection (1), "actuarially determined contribution" means the contribution amount determined by the board's

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actuary to be required, in addition to all other statutory contributions, to amortize the defined benefit plan's unfunded liabilities in 30 years as of latest actuarial valuation.

NEW SECTION. Section 5. {standard} Codification instruction.

[Section 4] is intended to be codified as an integral part of Title 19, chapter 3, part 3, and the provisions of Title 19, chapter 3, part 3, apply to [section 4].

NEW SECTION. Section 6. {standard} Severability. If a part of

[this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. {standard} Effective date. [This act]

is effective July 1, 2013.

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